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Aaron Chapman

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EXAMINER

DIXON, ANNETTE FREDRICKA

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/812,495	<b>Applicant(s)</b> CHAPMAN ET AL.	
	<b>Examiner</b> Annette F. Dixon	<b>Art Unit</b> 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office Action is in response to the request for consideration filed on April 4, 2008. Examiner acknowledges claims 21-34 are pending in this application, with claims 21-34 having been newly added, and claims 1-20 having been cancelled.

### ***Allowable Subject Matter***

2. The indicated allowability of claim 21 is withdrawn in view of the newly discovered reference(s) to Feathers (4,377,163) in view of Feder (5,267,815). Rejections based on the newly cited reference(s) follow.

### ***Continued Examination Under 37 CFR 1.114***

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 4, 2008 has been entered.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

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5. Claims 21-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Regarding claim 21, the word "means" is preceded by the word(s) "mounting" and "retaining" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

7. Regarding claims 23 and 24, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

8. Regarding claim 28, "a cylinder containing a fluid for breathing" lacks antecedent basis. Please correct the terminology to recite the recitation of claim 21, "a cylinder of breathable gas".

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. Claims 21-34 are rejected as best understood by the Examiner under 35 U.S.C. 103(a) as being unpatentable over Feathers (4,377,163) in view of Feder (5,267,815).

As to Claim 21, Feathers discloses a harness (1) for use with breathing equipment, the harness (1) comprising at least one shoulder support panel (4), and a belt portion (3), the belt portion (3) comprising attachment means (Figure 2) for attaching a cylinder of breathable gas (2, Column 2, Lines 57-58) to the belt portion (3), the attachment means (Figure 2) comprising a mounting means (5) arranged to engage releasably mounting portion of the cylinder (2) (Column 2, Lines 55-62), wherein, the shoulder support panel (4) is adapted to be arranged in use to pass around a wearer over one shoulder in a manner of a bandolier or sash (Column 3, Lines 1-12) and the belt portion (3) is adapted to be arranged in use to pass around the waist of the wearer (Column 3, Lines 37-38). Yet, Feathers does not expressly disclose a retaining means. However, at the time the invention was made a retaining means was known.

Specifically, Feder teaches a retaining means (the combination of straps 7, 8, 9, and 16 with cover, 2) arranged for retaining the cylinder (1) and preventing slippage (Column 5, Line 55 thru Column 6, Line 10, and Column 6, Lines 40-55), carrying the tank (Column 6, Lines 16-40), and to enable additional elements to be attached to the cylinder (Column 5, Lines 55-65, and Column 6, Lines 40-55). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Feathers to include a retaining means as taught by Feder to prevent slippage of the tank, to aid in the carrying of the tank and to enable additional elements to be attached to the tank during use.

As to Claims 22-24, the system of Feathers/Feder discloses a mounting means; yet, does not expressly disclose the flexible nature of the mounting plate and the ability of the mounting plate to be molded of plastic. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the mounting plate out of a molded plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Furthermore, it should be noted that the portion of the recitation that claims the mounting plate be molded is directed to a process. Since the claims are apparatus/product claims, patentable weight is only given to the end product. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

As to Claims 25 and 26, the system of Feathers/Feder teaches a cylinder that may be supported on the body of the harness wearer via the mounting means and retaining means as well as by the retaining means solely. The mounting means as disclosed in Feathers provides a mechanical coupling, while the retaining means in Feder provides a less secure retainment via hook and loop fasteners. Intrinsically, should the cylinder be solely supported by the retaining means and not the mounting

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means the connection between the cylinder and the retaining means would provide the recited loose attachment.

As to Claim 27, Feder teaches a retaining means (the combination of straps 7, 8, 9, and 16 with cover, 2) arranged for retaining the cylinder (1) and preventing slippage (Column 5, Line 55 thru Column 6, Line 10, and Column 6, Lines 40-55), carrying the tank (Column 6, Lines 16-40), and to enable additional elements to be attached to the cylinder (Column 5, Lines 55-65, and Column 6, Lines 40-55)

As to Claims 28 and 29, the system of Feathers/Feder discloses a harness; yet, the elements of the hip-plate, the connectors, and the manifold have not been discussed. Regarding the hip-plate, the connectors and the manifold, Feathers teaches a hip plate (9) arranged for location on the hip of the wearer for adjusting the fit of the harness (Column 3, Lines 7-10). Regarding the flexible nature of the hip-plate, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the hip-plate out of a flexible material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Regarding the connectors, Feathers teaches a first connector (5B) arranged for detachably connecting the cylinder, and a second connector (5A) arranged for non-detachably connecting the cylinder. (Column 2, Lines 58-67 and Column 4, Lines 2-10). It should be noted as the connector 5A is threaded thru the belt is not detachable (unless by destroying the belt) while the connector 5B is readily

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engagable. Regarding the manifold, Feathers teaches a manifold (15) for connecting the breathing gas line (16) of the face mask (19) and an additional supply line (26).

As to Claims 30-34, the system of Feathers/Feder discloses a shoulder panel (4); yet, does not expressly disclose the flexible nature of the shoulder panel and the ability of the shoulder panel to be made of foam. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the shoulder panel out of a foam, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

### ***Response to Arguments***

11. Applicant's arguments with respect to claims 21-34 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wise (5,584,289), Roslonski (3,897,381), Stevenson (5,022,790), and Deeds (4,054,132) disclose apparatuses having a shoulder strap, a belt strap, an attachment means, and a breathable gas canister; yet does not expressly disclose the additional retaining means for securing the breathable gas canister around the leg of the user. Dubois et al. (6,520,176) discloses a portable oxygen concentrator having a shoulder strap, and a breathable gas source; yet does not expressly disclose the use of



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a belt strap, nor the attachment means. Walters (3,670,509) discloses a buoyancy adjustment backpack having a shoulder strap, a belt strap, a breathable gas canister and an attachment means; yet does not expressly disclose the particulars of the attachment means for attaching the breathable gas canister. Antonio (2001/0047904) discloses a utility belt having an additional retaining means around the leg region of the user. Willits (4,434,793) discloses a pelvic stabilizer having a shoulder strap, a belt strap, an attachment means, and a retaining means for securing around the leg of the user; yet does not disclose a breathable gas canister.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Justine R Yu/  
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